

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:) Chapter 9
)
CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
)
) Hon. Steven W. Rhodes
Debtor.)

**JOINDER OF CLARK HILL PLC IN THE DETROIT RETIREMENT
SYSTEMS' LIMITED OBJECTION TO ENTRY OF PROPOSED ORDER
CONFIRMING EIGHTH AMENDED PLAN FOR THE ADJUSTMENT OF
DEBTS OF THE CITY OF DETROIT AND BRIEF IN SUPPORT**

Clark Hill PLC ("Clark Hill") joins in and concurs with: (i) The Detroit Retirement Systems' Limited Objection to Entry of Proposed Order Confirming Eighth Amended Plan for the Adjustment of Debts of the City of Detroit [Dkt. No. 8253] and (ii) the Brief in Support of the Detroit Retirement Systems' Limited Objection to Entry of Proposed Order Confirming Eight Amended Plan for the Adjustment of Debts of the City of Detroit [Dkt. No. 8393] filed on November 21, 2014.¹ In further support of this Joinder, Clark Hill states:

¹ Clark Hill does not submit to the jurisdiction of the Court. Rather, Clark Hill respectfully submits this pleading for the sole purpose of contesting such jurisdiction.

1. If the Court were to exercise purported jurisdiction in this matter and decided for some reason that the amount of the Retirement Systems' Professional Fees had to be reduced to qualify as "reasonable" under section 943(b)(3), and proposed to bar one or more of the Retirement Systems' professionals from enforcing its contractual rights against the Retirement Systems in a court of competent jurisdiction, the result would be a third-party injunction against a non-consenting party who is not a creditor of the City. This is impermissible.

2. Nonconsensual third-party releases test "the outer reaches of a bankruptcy court's jurisdiction." *Johns-Manville Corp. v. Chubb Indemn. Ins. Co. (In re Johns-Manville Corp.)*, 517 F.3d 52, 55 (2d Cir. 2008), *rev'd sub nom. Travelers Indemn. Co. v. Bailey*, 129 S.Ct. 2195 (2009) ("Manville III"). As the Second Circuit stated:

[The non-debtor releases] were meant to provide . . . global finality for Travelers. But global finality is only as "global" as the bankruptcy court's jurisdiction. A court's ability to provide finality to a third-party is defined by its jurisdiction, not its good intentions. We have previously recognized that "a nondebtor release is a device that lends itself to abuse. By it, a non-debtor can shield itself from liability to third parties. In form, it is a release; in effect, it may operate as a bankruptcy discharge arranged without a filing and without the safeguards of the Code."

Manville III, 517 F.3d at 66, *rev'd on other grounds*, *Travelers Indem. Co. v. Bailey*, 129 S. Ct. 2195 (June 18, 2009) (internal citations and quotations omitted), *aff'd in part & rev'd in part*, 600 F.3d 135 (2d Cir. 2010).

Clark Hill PLC expressly reserves its right to raise additional arguments in support of this Joinder at the hearing on November 24, 2014 or in connection with any subsequent proceedings as appropriate.

Dated: November 21, 2014

Respectfully submitted,

CLARK HILL PLC

/s/ Robert D. Gordon
Robert D. Gordon (P48627)
Ronald A. King (P45088)
151 S. Old Woodward Avenue, Suite 200
Birmingham, Michigan 48009
Telephone: (248) 988-5882
Facsimile: (248) 988-2502
rgordon@clarkhill.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:) Chapter 9
)
CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
)
)
) Hon. Steven W. Rhodes
Debtor.)

)

CERTIFICATE OF SERVICE

The undersigned certifies that on November 22, 2014, the Joinder of Clark Hill PLC in The Detroit Retirement Systems' Limited Objection to Entry of Proposed Order Confirming Eight Amended Plan for the Adjustment of Debts of the City of Detroit and Brief in Support was filed using the Court's CM/ECF system, which CM/ECF system will send notification of such filing to all parties of record.

CLARK HILL PLC

/s/ Robert D. Gordon

Robert D. Gordon (P48627)
151 S. Old Woodward Avenue, Suite 200
Birmingham, Michigan 48009
Telephone: (248) 988-5882
rgordon@clarkhill.com

*Counsel to the Police and Fire Retirement
System of the City of Detroit and the General
Retirement System of the City of Detroit*

Dated: November 22, 2014